

MONTANA LEGISLATIVE HISTORY

Chapter 401 1983

Bill H 811 S \_\_\_\_\_ Original bill & history ☒ c

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) 2/19 \_\_\_\_\_ c

Hearing Date(s) 3/21 \_\_\_\_\_ c

\_\_\_\_\_ c

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\_\_\_\_\_ c

Date Out \_\_\_\_\_ c

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Did this bill originate in an interim committee? \_\_\_\_ Yes \_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

INTRODUCED: 02/15/83  
REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES: 02/15/83  
HEARING: 2/18/83  
REPORT: 02/18/83, DO PASS, AS AMENDED  
2ND READING: 02/22/83, DO PASS AYES: 85; NAYS: 13  
3RD READING: 02/23/83, DO PASS AYES: 90; NAYS: 9  
  
TRANSMITTED TO SENATE: 02/23/83  
REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES: 3/1/83  
HEARING: 3/9/83  
REPORT: 3/24/83, BE NOT CONCURRED IN  
BILL KILLED: 3/24/83

HB 810 -- J. HAMMOND -- REMOVING VARIUS EXCLUSIONS FROM THE OVERTIME COMPENSATION LAW; AFFECTING EMPLOYEES UNDER 49 U.S.C. 304, CERTAIN EMPLOYEES AFFECTED BY THE FEDERAL INTERSTATE COMMERCE ACT, CERTAIN SALESMEN, CERTAIN TRIP-RATE PAID EMPLOYEES, CERTAIN AGRICULTURAL EMPLOYEES, TAXICAB DRIVERS, CERTAIN EMPLOYEES OF NONPROFIT EDUCATIONAL INSTITUTIONS, AND CERTAIN TIMBER INDUSTRY EMPLOYEES; AMENDING ....

INTRODUCED: 02/15/83  
REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS: 02/15/83  
HEARING: 2/19/83  
DIED IN COMMITTEE

HB 811 -- YARDLEY -- TO REQUIRE GUARDIANS AND CONSERVATORS FOR WARDS AND PROTECTED PERSONS TO FILE AN ACCOUNTING BY MARCH 31 OF EACH YEAR FOR THE PREVIOUS CALENDAR YEAR; AMENDING ....

INTRODUCED: 02/15/83  
REFERRED TO COMMITTEE ON JUDICIARY: 02/15/83  
HEARING: 2/19/83  
REPORT: 02/19/83, DO PASS, AS AMENDED  
2ND READING: 02/22/83, DO PASS AYES: 96; NAYS: 0  
3RD READING: 02/23/83, DO PASS AYES: 93; NAYS: 0

TRANSMITTED TO SENATE: 2/23/83  
REFERRED TO COMMITTEE ON JUDICIARY: 3/1/83  
HEARING: 3/21/83  
REPORT: 03/21/83, BE CONCURRED IN  
2ND READING: 03/23/83 AYES: 50; NAYS: 0  
3RD READING: 03/25/83 AYES: 49; NAYS: 0

RETURNED TO HOUSE: 03/25/83

TRANSMITTED TO GOVERNOR: 04/01/83  
SIGNED: 4/5/83, CHAPTER 401

HB 812 -- SHONTZ, YARDLEY -- TO PROVIDE THAT WHEN IT IS REQUIRED THAT LEGAL NOTICE BE GIVEN TO THE OWNER OF REAL PROPERTY NOTICE MUST ALSO BE GIVEN TO A PURCHASER OF THE PROPERTY UNDER A CONTRACT FOR DEED AND ANY ASSIGNEE OR SUCCESSOR OF SUCH A PURCHASER ....

INTRODUCED: 02/15/83  
REFERRED TO COMMITTEE ON JUDICIARY: 02/15/83  
HEARING: 2/19/83  
REPORT: 02/19/83, DO PASS, AS AMENDED  
2ND READING: 02/22/83, DO PASS AYES: 96; NAYS: 0

HOUSE BILL NO. 811  
INTRODUCED BY YARDLEY

IN THE HOUSE

|                   |                                                                                         |
|-------------------|-----------------------------------------------------------------------------------------|
| February 15, 1983 | Introduced and referred to Committee on Judiciary.                                      |
| February 19, 1983 | Committee recommend bill do pass as amended. Report adopted.                            |
| February 22, 1983 | Bill printed and placed on members' desks.<br><br>Second reading, do pass.              |
| February 23, 1983 | Considered correctly engrossed.<br><br>Third reading, passed.<br>Transmitted to Senate. |

IN THE SENATE

|                |                                                           |
|----------------|-----------------------------------------------------------|
| March 1, 1983  | Introduced and referred to Committee on Judiciary.        |
| March 21, 1983 | Committee recommend bill be concurred in. Report adopted. |
| March 23, 1983 | Second reading, concurred in.                             |
| March 25, 1983 | Third reading, concurred in.<br>Ayes, 49; Noes, 0.        |

IN THE HOUSE

|                |                                                        |
|----------------|--------------------------------------------------------|
| March 25, 1983 | Returned to House.                                     |
| March 26, 1983 | Sent to enrolling.<br><br>Reported correctly enrolled. |

1 House BILL NO. 811  
2 INTRODUCED BY Gardley  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE GUARDIANS  
5 AND CONSERVATORS FOR WARDS AND PROTECTED PERSONS TO FILE AN  
6 ACCOUNTING BY MARCH 31 OF EACH YEAR FOR THE PREVIOUS  
7 CALENDAR YEAR; AMENDING SECTIONS 72-5-321 AND 72-5-438,  
8 MCA."  
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 72-5-321, MCA, is amended to read:

12 "72-5-321. Powers and duties of guardian of  
13 incapacitated person. (1) The powers and duties of a limited  
14 guardian are those specified in the order appointing the  
15 guardian. The limited guardian is required to report the  
16 condition of the incapacitated person and of the estate that  
17 has been subject to his possession and control, as required  
18 by the court or by court rule.

19 (2) A full guardian of an incapacitated person has the  
20 same powers, rights, and duties respecting his ward that a  
21 parent has respecting his unemancipated minor child, except  
22 that a guardian is not liable to third persons for acts of  
23 the ward solely by reason of the parental relationship. In  
24 particular and without qualifying the foregoing, a full  
25 guardian has the following powers and duties, except as

1 limited by order of the court:

2 (a) To the extent that it is consistent with the terms  
3 of any order by a court of competent jurisdiction relating  
4 to detention or commitment of the ward, he is entitled to  
5 custody of the person of his ward and may establish the  
6 ward's place of abode within or without this state.

7 (b) If entitled to custody of his ward, he shall make  
8 provision for the care, comfort, and maintenance of his ward  
9 and whenever appropriate arrange for his training and  
10 education. Without regard to custodial rights of the ward's  
11 person, he shall take reasonable care of his ward's  
12 clothing, furniture, vehicles, and other personal effects  
13 and commence protective proceedings if other property of his  
14 ward is in need of protection.

15 (c) A full guardian may give any consents or approvals  
16 that may be necessary to enable the ward to receive medical  
17 or other professional care, counsel, treatment, or service.

18 (d) If no conservator for the estate of the ward has  
19 been appointed, a full guardian may:

20 (i) institute proceedings to compel any person under a  
21 duty to support the ward or to pay sums for the welfare of  
22 the ward to perform his duty;

23 (ii) receive money and tangible property deliverable to  
24 the ward and apply the money and property for support, care,  
25 and education of the ward; but he may not use funds from his

-2- INTRODUCED BILL

HB 811

ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

(e) ~~Unless waived by the court, a full guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control as required by the court or court rule by March 31 of each year for the preceding calendar year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.~~

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the full guardian must account to the conservator for funds expended.

~~(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for his failure to file a timely report.~~

~~(3)(4)~~ Any full guardian of one for whom a conservator

also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which he is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee such aspects of the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

~~(4)(5)~~ No full guardian or limited guardian may involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is himself unwilling or unable to give informed consent to such commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21."

Section 2. Section 72-5-438, MCA, is amended to read:

1       "72-5-438. Accounts -- final and intermediate. (1)  
 2       ~~Every Unless waived by the court, every~~ conservator must  
 3       account to the court for his administration of the trust by  
 4       ~~March 31 of each year for the preceding calendar year and~~  
 5       also upon his resignation or removal and at other times as  
 6       ~~the court may direct. A copy of the account must be served~~  
 7       ~~upon the protected person's parent, guardian, child, or~~  
 8       ~~sibling if that person has made an effective request under~~  
 9       ~~72-5-404.~~ On termination of the protected person's minority  
 10       or disability, a conservator may account to the court or he  
 11       may account to the former protected person or his personal  
 12       representative.

13       (2) Subject to appeal or vacation within the time  
 14       permitted, an order made upon notice and hearing allowing an  
 15       intermediate account of a conservator adjudicates as to his  
 16       liabilities concerning the matters considered in connection  
 17       therewith; and an order made upon notice and hearing  
 18       allowing a final account adjudicates as to all previously  
 19       unsettled liabilities of the conservator to the protected  
 20       person or his successors relating to the conservatorship.

21       (3) In connection with any account, the court may  
 22       require a conservator to submit to a physical check of the  
 23       estate in his control, to be made in any manner the court  
 24       may specify.

25       ~~(4) Upon failure, as determined by the clerk of court,~~

1       ~~of the conservator to file an annual account, the court~~  
 2       ~~shall order the conservator to file the account and give~~  
 3       ~~good cause for his failure to file a timely account."~~

-End-

MINUTES OF THE JUDICIARY COMMITTEE  
February 19, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 7:02 a.m. in room 224A of the capitol building, Helena, Montana. All members were present with the exception of Representative Darko, who was excused. Brenda Desmond, Staff Attorney for the Legislative Council, was also present.

HOUSE BILL 812

REPRESENTATIVE SHONTZ explained this bill, which provides that when it is required that legal notice be given to the owner of real property, notice must also be given to a purchaser of the property under a contract of deed. BRENDA DESMOND passed out some proposed amendments for this bill. See EXHIBIT A. REPRESENTATIVE SHONTZ stated that in 1981, there were many homes sold on contract for deed in Montana. He also testified that the filing of water rights is also very important and gave an example wherein in the Sidney area about ten years ago, a rancher lost his water rights to a stock pond because he was buying the property from an individual who lived in Arizona; and he had not been informed when someone filed rights on the stock pond, that was mostly on his property.

BILL ROMINE, representing the Montana Association of County Clerks and Recorders, stated that he had prepared amendments to do what Representative Shontz had already done. He testified that, with these amendments, they supported this bill. He commented that some of the clerks are already doing this. He further said that Senate Bill 401 should address the water rights problem.

There were no further proponents.

There were no opponents.

REPRESENTATIVE SHONTZ indicated that Senate Bill 401 addresses instances where a title changes hands, but when there is a contract of deed, it does not apply.

There were no questions and the hearing on this bill was closed.

HOUSE BILL 828

REPRESENTATIVE CURTISS, District 20, Lincoln, stated that this is one more bill that attempts to bring about more

filed on them, in these instances, they would have to file in thirty days or they could not take an action. He said they they have trouble with Missoula County, Cascade County and Yellowstone County wherein they are physically removed from it, and that Lewis and Clark County does a great deal of work for them and they do have a good working relationship.

REPRESENTATIVE SPAETH stated that when he was an attorney for the state he felt he had a better forum in the first judicial district than somewhere else, and he wondered if this was a fact. MR. KANE answered that not in the wage cases - it is a formality - a matter of getting it before the judge and getting it signed. He did not feel that he could point a finger at any special district.

DON JUDGE, representing the Montana AFL-CIO, said that he wanted to point out a direct conflict of interest in this bill, which is on page 24, line 8, "39-31-106" and wondered about a claim filed against a county where the county attorney is responsible for representing the county.

There were no further questions and the hearing on this bill was closed.

HOUSE BILL 811

REPRESENTATIVE YARDLEY stated that this bill requires that a guardian or conservators for wards and protected persons file an accounting by March 31 of each year.

DOUG OLSON, representing the Montana Seniors' Advocacy Assistance, offered testimony in favor of this bill. See EXHIBIT C.

BILL ROMINE, representing himself, stated that he is a conservator for many disabled war veterans at the Veterans' Administration and he suggested that the bill be changed to say each year instead of March 31. He offered further testimony. See EXHIBIT D.

There were no further proponents and no opponents.

REPRESENTATIVE YARDLEY closed.



Judiciary Committee  
February 19, 1983  
Page Five

REPRESENTATIVE DAVE BROWN questioned REPRESENTATIVE YARDLEY if the word "annually" would be O.K. REPRESENTATIVE YARDLEY said that that would be fine.

REPRESENTATIVE CURTISS wondered what would be a suitable cut-off if they do not stay with the \$7,500.00 one. REPRESENTATIVE YARDLEY replied that it would be his idea that if they are just getting a few hundred a month, they could request the judge to waive it from that point on.

There were no further questions and the hearing on this bill was closed.

#### HOUSE BILL 831

REPRESENTATIVE VINCENT, District 78, stated that this bill is essentially a compromise bill that no longer fits within the scope of the title; this will require contractors to provide notice of a potential lien for labor or materials provided by subcontractors. He stated that it is the only vehicle that is left to try to do something to simply alert consumers that they could end up in this bind.

JOE OLSON, the Secretary-Manager of the Montana Contractors' Association, stated that he was in the yes, no, or maybe category on this bill. He explained that as far as the intent of the bill, he was in agreement with this, but he did feel that it should be expanded somewhat on public works contracts. He suggested amending the bill by adding a subsection (4) to section 1, reading: "that the notice of potential lien liability is not required when the contracting owner has required the contractor to provide a labor and materials bond as part of the contract. The labor and materials bond shall be in the full amount of the contract." He said that on public works contracts, there is a requirement for a performance bond and a payment bond.

JOHN HOLLOW, representing the Montana Home Builders' Association, testified that they certainly support this bill.

DICK KANE, Administrator of the Labor Standards Division of the Department of Labor and Industry, said that if they are

MINUTES OF THE JUDICIARY COMMITTEE  
February 19, 1983 - P.M.

The meeting of the House Judiciary Committee was called to order to Chairman Dave Brown in room 224A of the capitol building, Helena, Montana at 1:22 p.m.

Representative Dave Brown passed out copies of testimony offered on HOUSE BILL 831, presented by IRVIN E. DELLINGER, Executive Secretary for the Montana Building Dealers Association. See EXHIBIT A.

EXECUTIVE SESSION

HOUSE BILL 811

REPRESENTATIVE KEYSER moved that the bill DO PASS. The motion was seconded by REPRESENTATIVE JENSEN. REPRESENTATIVE KEYSER moved that the bill be amended on page 3, line 10 by striking "by March 31 of each year" and inserting "annually" also on page 5 and in the title. REPRESENTATIVE JENSEN seconded. The motion carried unanimously. REPRESENTATIVE KEYSER moved that this bill DO PASS, AS AMENDED. The motion was seconded by REPRESENTATIVE JENSEN. The motion carried unanimously.

HOUSE BILL 812

REPRESENTATIVE JENSEN moved that this bill DO PASS, seconded by REPRESENTATIVE KEYSER. MS. DESMOND explained the amendments offered by Representative Shontz. See EXHIBIT B. REPRESENTATIVE JENSEN moved adoption of the amendment, seconded by REPRESENTATIVE ADDY.

REPRESENTATIVE HANNAH questioned what is the effect of that amendment. REPRESENTATIVE ADDY replied that it says that a purchaser under contract of deed is entitled to notice only when he has filed a notice of purchaser's interest with the county clerk and recorder.

REPRESENTATIVE HANNAH wondered if the holder of an unrecorded contract stands to be damaged by this bill. REPRESENTATIVE ADDY answered no that this bill neither helps nor hurts that person. Addy further stated that perhaps the holder of an unrecorded contract does not deserve to be helped since he has not bothered to file.

The motion on the amendment carried unanimously.

REPRESENTATIVE JENSEN moved that the bill DO PASS, AS AMENDED. The motion was seconded by REPRESENTATIVE BERGENE. The motion carried unanimously.

# STANDING COMMITTEE REPORT

February 19, 1983

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 811

First reading copy (White)  
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE GUARDIANS AND CONSERVATORS FOR WARDS AND PROTECTED PERSONS TO FILE AN ACCOUNTING BY MARCH 31 OF EACH YEAR FOR THE PREVIOUS CALENDAR YEAR: AMENDING SECTIONS 72-5-321 AND 72-5-439, MCA."

HOUSE Bill No. 811  
Respectfully report as follows: That

## BE AMENDED AS FOLLOWS:

1. Title, line 5.

Following: "AN"

Insert: "ANNUAL"

2. Title, line 6.

Strike: "BY" through "YEAR" on line 7.

3. Page 3, line 10.

Strike: "by March 31 of each year"

Insert: "annually"

4. Page 3, line 11.

Strike: "calendar"

5. Page 5, line 3.

Strike: "by March 31 of each year"

Insert: "annually"

DO PASS

6. Page 5, line 4.

Strike: "calendar"

AND AS AMENDED DO PASS

DAVE BROWN, Chairman.

# MONTANA SENIORS' ADVOCACY ASSISTANCE

P.O. Box 232 • Capitol Station • Helena, Montana 59620  
(406) 449-4676 (Helena) • 1-800-332-2272 (Toll-free)

Exhibit C  
HB 811  
2/19/83

DOUGLAS B. OLSON, Attorney  
Elderly Legal Services Developer

LENORE F. TALIAFERRO  
Montana State Nursing Home Ombudsman

February 19, 1983

Representatives,  
House Judiciary Committee  
48th Legislative Session  
State Capitol  
Helena, Montana 59620

re: House Bill 811

Dear Representatives:

Montana Seniors' Advocacy Assistance (MSAA) serves as an advocate in areas impacting the legal rights and laws affecting senior citizens. I serve as the contracted attorney under the federal Older Americans Act who is responsible for developing and coordinating legal services in Montana for senior citizens. One of the legal areas of greatest importance to us is the area of protective legal services or the areas of guardianships and conservatorships, the protection of a person or his or her financial estate.

House Bill 811 was introduced in part at our request by Rep. Yardley to provide better accountability of the assets of wards, those persons under a guardian's control, and of protected persons, those under a conservatorship. Under present laws found in the Montana Probate Code, guardians and conservators once they are appointed by a court are not required to annually file a report indicating the expenses and receipts attributable to the estate they are chosen to oversee as fiduciaries or so-called trustees unless specifically ordered by the court to do so. HB 811 would modify the present law by mandating an annual accounting to the court and other interested relatives or friends of the ward or protected person unless this requirement was specifically waived in each individual case. We requested this change in the law due to several cases of mismanagement of guardianships and conservatorships that were discovered years later when the cases were reviewed that resulted in premature depletion of the individual's assets because of no annual accounting. We believe this change in the present law is reasonable for it merely returns to the policy in effect prior to 1976 in Montana that required annual accountings unless waived by the court.

If the language amending the present law poses some problems as it now appears in the bill, we would welcome any constructive amendments that would still retain the spirit of the legislation.

Sincerely,

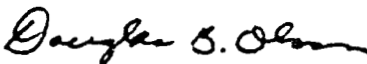
  
Douglas B. Olson  
Attorney

Exhibit - 2  
HB 811  
2/19/83

# WITNESS STATEMENT

Name Bill Romine Committee On Judiciary  
Address Helena Date 2-19-83  
Representing self Support \_\_\_\_\_  
Bill No. HB 811 Oppose \_\_\_\_\_  
Amend X

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Comments:

1. the accounting of guardians should be made ~~once~~ once a year, but ~~not~~ all accountings should not be done at the same time. This bill should be amended on page 3 by striking on line 10 the words "by March 31 of each year" ~~for the preceding~~
2. ~~and by~~ and by inserting the word "yearly".
3. the same amendment should be inserted on page 5 line 3 by striking the words "by March 31 of each year" and inserting the word "yearly"
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

## VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

ULL HOUSE BILL 811

Date February 19, 1983

SPONSOR REPRESENTATIVE YARDLEY

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 21, 1983

The forty-eighth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 21, 1983, at 10:04 a.m., in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 588: Representative Swift, sponsor of the bill, stated that the reason for HB588 is to clarify the effect of an abandonment of a county road located in a subdivision or elsewhere. Representative Swift testified that Ravalli County is one of the fastest growing areas in Montana, and in the last three years, there have been three or four cases which had to go to trial over this issue. He testified that in cases where the roads were located in subdivisions, the judge decided that County Commissioners could not dedicate these roads to be used in a public roadway system. Representative Swift stated that the question proposed in HB588 is should the County Commissioners keep the roadway as it was originally intended. Representative Swift feels that the reason this question has arisen is because the statutes are not clear. HB588 is intended to give the statutes more clarity and give the County Commissioners clear authority over the 800 miles of road in question.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Turnage raised the question what would happen if in the future these subdivisions in question were annexed into the city. Representative Swift replied that the law would still apply, but the bill could be amended to reflect this situation in case it ever arose.

There being no further questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 811: Representative Yardley, sponsor of the bill, testified that he is sponsoring this bill at the request of a number of attorneys. HB811 requires conservators of estates to file an annual accounting with the court. Representative Yardley reviewed the contents of the bill with the Committee and stated that this bill does not always require the accounting. In cases such as where there are insufficient funds, the court has the option of waiving the annual accounting. Representative Yardley explained that the annual report is filed to protect the ward.

PROPOSERS: Mr. Douglas B. Olson, representing the Montana Senior's Advocacy Assistance, submitted written testimony (see attached Exhibit "A") in support of HB855. Mr. Olson testified that one of his responsibilities is to provide technical assistance to socially dependent senior citizens. Mr. Olson stated that prior to the adoption of the Uniform Probate Code, these annual reports

were required to be filed, and he told of some of the problems that are caused by not filing an annual report with the court. Mr. Olson strongly urges the passage of HB811.

There being no further proponents, no opponents and no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 731: Representative Ramirez, sponsor of the bill, testified that this bill changes the Uniform Act to encompass any federal lien and not just a tax lien. He stated that HB731 provides for filing in cases of liens against estates.

There being no further proponents, no opponents and no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 789: Representative Abrams, sponsor of the bill, opened the hearing by introducing Charles Graveley, who testified on behalf of the Lewis and Clark County Assessor's Office. Mr. Graveley testified that HB789 is necessary because of the disagreement which exists between the County Assessor's Office and the Montana State Department of Revenue as to what an "agent" is. Mr. Graveley testified that although the Department of Revenue interprets "agent" as the Assessor, often times at hearings, the Department would designate another person to act in that capacity. HB789 would eliminate the need for the Assessor to appear at tax appeal hearings.

There being no further proponents, no opponents and no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 677: Representative Nilson, sponsor of the bill, circulated petitions signed by citizens who support HB677 (see attached Exhibit "B"). Representative Nilson explained that HB677 amends Section 23-5-412 of the Bingo and Raffles Law. HB677 would allow Bingo prizes to be paid in cash. Representative Nilson feels that since most Bingo prizes are paid in cash, and this is in direct violation of the Act as it now reads, the law should be changed to reflect what is being done anyway. Representative Nilson emphasized that HB677 would not expand gambling in Montana.

PROPOSERS: Ingebang Maddio, representing the Little Flower Circle of the Daughters of Isabella, Circle 496, testified that her organization uses the proceeds from their bingo games as a money-making project. She testified that although their organization has been cash as prizes, they do not want to break the law. For this reason, Mrs. Maddio urged passage of HB677.



HB677 is not a slot machine bill. Senator Turnage disagreed and stated that it is discouraging to see a slot machine bill come into the Legislature under false colors. Senator Turnage felt this is a great injustice to people like the senior citizens who really enjoy playing Bingo.

Representative Nilson closed the hearing by stating that HB677 is not a slot machine bill and would not expand gambling in Montana. He stated that Initiative 92 was a broad initiative and was voted on in its entirety. Representative Nilson stated that this initiative did not include cash prizes for bingo.

There being no further questions from the Committee, the hearing was closed.

ACTION ON HOUSE BILL 588: Senator Crippen moved that HB588 BE NOT CONCURRED IN. Senator Shaw then made a substitute motion that HB588 BE TABLED. This motion was carried unanimously.

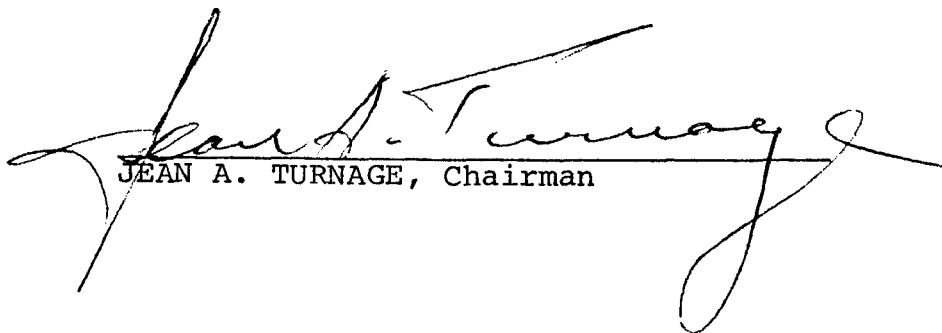
ACTION ON HOUSE BILL 811: Senator Daniels moved that HB811 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 789: Senator Crippen moved that HB789 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 731: Senator Halligan moved that HB731 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 812: Senator Mazurek moved that the amendments to HB812 BE ADOPTED. This motion carried unanimously. Senator Mazurek then moved that HB812 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

There being no further business to come before the Committee, the meeting was adjourned.

  
JEAN A. TURNAGE, Chairman

# MONTANA SENIORS' ADVOCACY ASSISTANCE

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Exhibit "A"  
March 21, 1983  
HB811

DOUGLAS B. OLSON, Attorney

March 21, 1983

Senators  
Senate Judiciary Committee  
48th Legislative Session  
Capitol Station  
Helena, Montana 59620

re: House Bill 811

Dear Chairman Turnage & Committee Members:

Montana Seniors' Advocacy Assistance (MSAA) serves as an advocate for Montana's elderly in areas which impact their legal rights. I serve as the contracted attorney for the State of Montana who is responsible for developing and coordinating legal services for senior citizens pursuant to an Advocacy Assistance Grant under Title IV-C of the federal Older Americans Act. One of my responsibilities is to provide technical assistance to attorneys in private practice in Montana who have contracted with Area Agencies on Aging to provide direct legal services to socially and economically needy senior citizens.

I have received several comments from attorneys in Montana who provide legal assistance to senior citizens that the present laws regarding guardianships and conservatorships are inadequate insofar as they relate to reporting requirements. Specifically, present Montana laws in these areas which provide protective services for senior citizens needing help in managing their own affairs do not require annual reports as to the financial undertakings made on the ward or protected person's behalf.

Prior to the mid-1970's when Montana adopted the Uniform Probate Code, guardians and conservators were required to file an annual report with the district court unless this requirement was specifically waived by the court. Under present law, no report is required annually unless specifically ordered by the court. This has created some problems because without annual reportings being the rule rather than the exception, the financial assets of wards and protected persons have been prematurely dissipated through negligence and mismanagement in several cases. By the time a friend, relative or neighbor becomes concerned with what is happening, too often irreparable damage has been done.

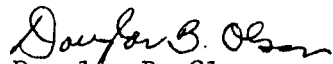
House Bill 811 sponsored by Rep. Dan Yardley would take positive steps to correct these problems by reversing the current practice and requiring that annual accountings be made to our state's courts unless waived by the Judge in each case. Good financial management principles call for annual review of a trust's income and expenditures for income tax purposes by the trustee. Guardians and conservators have the same fiduciary duties as trustees. In those instances in which the costs of an annual accounting would outweigh its benefits, a judge could waive the annual accounting requirement sought by House Bill 811.

Letter to Senate Judiciary Committee  
re: House Bill 811  
Page 2  
from: Mt. Seniors' Advoc. Asst.  
March 21, 1983

Montana Seniors' Advocacy Assistance supports House Bill 811 with the amendments imposed by the House of Representatives. The bill unanimously passed the House, and on behalf of Montana's senior citizens who are presently wards or protected persons and all of us who may someday be in their shoes, I would respectfully request your passage of this bill.

Thank you for an opportunity to address your committee concerning this issue.

Sincerely,



Douglas B. Olson

Attorney

Contracted Developer of  
Elderly Legal Services

# STANDING COMMITTEE REPORT

..... March 21, ..... 19 83 .....

MR. **President** .....

We, your committee on ..... **Senate Judiciary** .....

having had under consideration ..... **House** ..... Bill No. **811** .....  
**Yardley (Mazurek)**

Respectfully report as follows: That ..... **House** ..... Bill No. **811** .....

**DUPASS**

**BE CONCURRED IN**

HOUSE BILL NO. 811  
INTRODUCED BY YARDLEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE GUARDIANS  
AND CONSERVATORS FOR WARDS AND PROTECTED PERSONS TO FILE AN  
ANNUAL ACCOUNTING BY-MARCH-31-OF-EACH-YEAR-FOR-THE--PREVIOUS  
CALENDAR--YEAR; AMENDING SECTIONS 72-5-321 AND 72-5-438,  
MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-5-321, MCA, is amended to read:

"72-5-321. Powers and duties of guardian of  
incapacitated person. (1) The powers and duties of a limited  
guardian are those specified in the order appointing the  
guardian. The limited guardian is required to report the  
condition of the incapacitated person and of the estate that  
has been subject to his possession and control, as required  
by the court or by court rule.

(2) A full guardian of an incapacitated person has the  
same powers, rights, and duties respecting his ward that a  
parent has respecting his unemancipated minor child, except  
that a guardian is not liable to third persons for acts of  
the ward solely by reason of the parental relationship. In  
particular and without qualifying the foregoing, a full  
guardian has the following powers and duties, except as

limited by order of the court:

(a) To the extent that it is consistent with the terms  
of any order by a court of competent jurisdiction relating  
to detention or commitment of the ward, he is entitled to  
custody of the person of his ward and may establish the  
ward's place of abode within or without this state.

(b) If entitled to custody of his ward, he shall make  
provision for the care, comfort, and maintenance of his ward  
and whenever appropriate arrange for his training and  
education. Without regard to custodial rights of the ward's  
person, he shall take reasonable care of his ward's  
clothing, furniture, vehicles, and other personal effects  
and commence protective proceedings if other property of his  
ward is in need of protection.

(c) A full guardian may give any consents or approvals  
that may be necessary to enable the ward to receive medical  
or other professional care, counsel, treatment, or service.

(d) If no conservator for the estate of the ward has  
been appointed, a full guardian may:

(i) institute proceedings to compel any person under a  
duty to support the ward or to pay sums for the welfare of  
the ward to perform his duty;

(ii) receive money and tangible property deliverable to  
the ward and apply the money and property for support, care,  
and education of the ward; but he may not use funds from his

1 ward's estate for room and board which he, his spouse,  
2 parent, or child have furnished the ward unless a charge for  
3 the service is approved by order of the court made upon  
4 notice to at least one of the next of kin of the incompetent  
5 ward, if notice is possible. He must exercise care to  
6 conserve any excess for the ward's needs.

7 (e) ~~\* Unless waived by the court, a full guardian is~~  
8 ~~required to report the condition of his ward and of the~~  
9 ~~estate which has been subject to his possession or control,~~  
10 ~~as required by the court or court rule by March 31 of each~~  
11 ~~year ANNUALLY for the preceding calendar year. A copy of the~~  
12 ~~report must be served upon the ward's parent, child, or~~  
13 ~~sibling if that person has made an effective request under~~  
14 ~~72-5-318.~~

15 (f) If a conservator has been appointed, all of the  
16 ward's estate received by the full guardian in excess of  
17 those funds expended to meet current expenses for support,  
18 care, and education of the ward must be paid to the  
19 conservator for management as provided in this code, and the  
20 full guardian must account to the conservator for funds  
21 expended.

22 (3) ~~Upon failure, as determined by the clerk of court,~~  
23 ~~of the guardian to file an annual report, the court shall~~  
24 ~~order the guardian to file the report and give good cause~~  
25 ~~for his failure to file a timely report.~~

1 ~~(3)(1)~~ Any full guardian of one for whom a conservator  
2 also has been appointed shall control the custody and care  
3 of the ward. A limited guardian of a person for whom a  
4 conservator has been appointed shall control those aspects  
5 of the custody and care of the ward over which he is given  
6 authority by the order establishing the limited  
7 guardianship. The full guardian or limited guardian is  
8 entitled to receive reasonable sums for his services and for  
9 room and board furnished to the ward as agreed upon between  
10 him and the conservator, provided the amounts agreed upon  
11 are reasonable under the circumstances. The full guardian  
12 or limited guardian authorized to oversee such aspects of  
13 the incapacitated person's care may request the conservator  
14 to expend the ward's estate by payment to third persons or  
15 institutions for the ward's care and maintenance.

16 ~~(4)(1)~~ No full guardian or limited guardian may  
17 involuntarily commit for mental health treatment or for  
18 treatment of a developmental disability or for observation  
19 or evaluation a ward who is himself unwilling or unable to  
20 give informed consent to such commitment, except as provided  
21 in 72-5-322, unless the procedures for involuntary  
22 commitment set forth in Title 53, chapters 20 and 21, are  
23 followed. This chapter does not abrogate any of the rights  
24 of mentally disabled persons provided for in Title 53,  
25 chapters 20 and 21."

Section 2. Section 72-5-438, MCA, is amended to read:

"72-5-438. Accounts -- final and intermediate. (1)

Every ~~Unless waived by the court, every~~ conservator must account to the court for his administration of the trust ~~by March 31 of each year~~ ANNUALLY for the preceding calendar year and also upon his resignation or removal ~~and at other times as the court may direct. A copy of the account must be served upon the protected person's parent, guardian, child, or sibling if that person has made an effective request under 72-5-404.~~ On termination of the protected person's minority or disability, a conservator may account to the court or he may account to the former protected person or his personal representative.

(2) Subject to appeal or vacation within the time permitted, an order made upon notice and hearing allowing an intermediate account of a conservator adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order made upon notice and hearing allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

~~(4) Upon failure, as determined by the clerk of court, of the conservator to file an annual account, the court shall order the conservator to file the account and give good cause for his failure to file a timely account."~~

-End-